SB Civil Review Petition No.04/2000

Date of Order: **10th February, 2006.**

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD

Mr. M.C.Bhoot for the petitioner/s.
Mr.Rajendra Mehta for the respondent/s.

Heard learned counsel for the parties.

The present review petition has been filed against the order dated 04th February, 2000 whereby the petitioner's revision petition against the order dated 30th March, 1999 rejecting the petitioner's objection under Section 47 CPC regarding executability of the decree for eviction was rejected by the Executing Court. The learned counsel for the respondents raised preliminary objection that the review petition is not maintainable as firstly, the decree against which objections were raised stood already executed and the suit premises have altogether changed the shape. The original premises are not in existence and secondly, there is no error apparent on the face of record and the points raised in the revision petition do not fall within the purview of Order 41 Rule 1 CPC.

Brief facts of the case are that decree for eviction was

passed by the learned Trial Court and matter came up before this Hon'ble Court in second appeal and when the case was remanded back and parties were directed to appear before the learned Trial Court on 10.07.1995, the matter again came up before this Hon'ble Court in the second inning and the eviction order was maintained. The decree holder filed the execution of the decree. A legal objection was raised that decree was not executable as according to the learned counsel for the petitioner, when in the first inning the learned trial court's decree having not been set aside in specific term, the learned trial court has no jurisdiction to pass a fresh decree.

The objection raised by the judgment debtor has been rejected by this Hon'ble Court in the above said revision petition and after going through the facts and circumstances of the case, it cannot be said that the order under review suffers from any error apparent on the face of record or an error which can be cured under Order 47 Rule 1 CPC and as such, the review petition is dismissed with no order as to costs.

(BHAGWATI PRASAD), J.

L.George